(1)

91-591

No.

IN THE

Supreme Court Of The United States

October Term, 1991

INSLAW, INC.,

Petitioner,

v.

UNITED STATES OF AMERICA and
UNITED STATES DEPARTMENT OF JUSTICE,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

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QUESTIONS PRESENTED

1. Whether the automatic stay, section 362(a)(3) of the Bankruptcy Code, which broadly proscribes "any act ... to exercise control over property of the estate," exempts the postpetition conduct of a party who obtained possession of the property before the bankruptcy, however wrongfully, and who holds the property under a claim of right, however spurious.

2. Whether Article III of the Constitution prohibits a bankruptcy court from adjudicating a claim for violation of the automatic stay if that claim also encompasses a dispute that could be resolved before another federal tribunal.

3. Whether a bankruptcy court lacks jurisdiction, independent of the automatic stay, to issue a declaratory judgment that a debtor has exclusive rights to disputed property of the estate and to grant injunctive relief against acts involving such property that jeopardize a debtor's ability to reorganize or, alternatively, to hear such a dispute as a non-core related matter.

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Petitioner INSLAW, Inc. prays for a writ of certiorari to review the judgment of the United States Court of Appeals for the District of Columbia Circuit entered in this case on May 7, 1991.[1]

OPINIONS BELOW

The opinion of the United States Court of Appeals for the District of Columbia Circuit is reported at 932 F.2d 1467, reprinted in Petitioner's Appendix ("Pet. App.") at 3a.

The memorandum opinion of the United States District Court for the District of Columbia is reported at 113 B.R. 802, reprinted in Pet. App. at 19a.

[1] All parties are named in the caption. INSLAW has no parent companies, subsidiaries or affiliates.

The opinion of the United States Bankruptcy Court for the District of Columbia following trial on the merits may be found at 83 B.R. 89, reprinted in Pet. App. at 59a. The opinion of the bankruptcy court denying respondents' motion to dismiss may be found at 76 B.R. 224.

JURISDICTION

Invoking federal jurisdiction under 11 U.S.C. § 105 and 28 U.S.C. §§ 157 and 1334, petitioner filed a complaint in the United States Bankruptcy Court for the District of Columbia on June 10, 1986, for a declaratory judgment that its trade secret software was "property of the estate," and separately for declaratory, injunctive and monetary relief for violations of 11 U.S.C. § 362(a)(3), the automatic stay under the Bankruptcy Code. On January 25, 1988, the bankruptcy court entered judgment in favor of petitioner. The United States District Court for the District of Columbia affirmed the bankruptcy court judgment on November 22, 1989. A panel of the United States Court of Appeals for the District of Columbia reversed the district court judgment on jurisdictional grounds in an order and opinion entered on May 7, 1991. The panel denied a timely petition for rehearing and the full court denied a suggestion for rehearing *en banc* on July 12, 1991. Pet. App. 1a-2a. Jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

The Constitutional provisions involved in this case are Article I, § 8, cl. 4 and Article III. Statutes involved in this case are sections 362, 541 and 542 of the Bankruptcy Code, 11 U.S.C. §§ 362, 541 and 542, and 28 U.S.C. §§ 157 and 1334. The text of the statutory provisions is printed in Pet. App. at 243a.

STATEMENT OF THE CASE

This case involves a debtor in bankruptcy whose proprietary software was used, copied and widely disseminated by respondents in the postpetition period without the debtor's license or authorization, and whose title and ownership of that software was publicly challenged and slandered by respondents before the debtor's creditors and customers. The bankruptcy court first found that the software was the exclusive property of the estate and, second, that the acts of respondents violated the automatic stay. The district court affirmed. The court of appeals reversed for lack of jurisdiction. In the court of appeals' view, the automatic stay cannot be violated by a party that obtained property in the prepetition period under a claim of right, even where the property was obtained by fraud and the claim of right was spurious. The court of appeals further ignored the separate and broader alternative bases of jurisdiction invoked by the bankruptcy court, and affirmed by the district court, to hear and issue the declaratory and injunctive relief requested in the debtor's complaint.

1. Petitioner INSLAW, Inc. ("INSLAW") develops and licenses computer software to assist in case management and debt collection by government law enforcement agencies and private companies. Pet. App. 5a, 20a, 68a. In the late 1970s, while operating as a not-for-profit corporation, INSLAW developed with federal funds a public domain software system known as "Prosecutors' Management Information System" or "PROMIS." *Id.*; Pet. App. 69a-70a. In 1981, INSLAW was incorporated as a for-profit corporation specifically to develop and market using private funds a more advanced software system — "Enhanced PROMIS" — that comprised trade secrets created and owned by INSLAW. Pet. App. 5a, 20a, 73a; *see* Pet. App. 73a-84a. Enhanced PROMIS was INSLAW's central asset. Pet. App. 5a, 51a, 119a.

In March 1982, the United States Department of Justice ("the Department") contracted with INSLAW to install public domain PROMIS in the 20 largest United States Attorney's Offices and the Executive Office of United States Attorneys. Pet. App. 6a, 21a-22a, 124a-127a. Although it was undisputed that the contract covered only public domain PROMIS, in November 1982, the Department without justification demanded delivery of INSLAW's proprietary Enhanced PROMIS software, and threatened to withhold fees and costs if INSLAW refused.[2] Pet. App. 6a, 24a, 144a-146a. On April 11, 1983, INSLAW acceded to the Department's demand upon two explicit conditions. First, the Department promised to determine whether it wanted to license Enhanced PROMIS and, if so, to negotiate an additional fee. Second, the Department agreed to restrict its dissemination and use of Enhanced PROMIS only to those 20 offices that were slated to receive PROMIS under the contract. Pet. App. 7a, 24a-26a, 150a-156a, 162a, 224a-226a. In reliance on these promises, set forth in a modification to the contract, INSLAW turned over and/or installed copies of Enhanced PROMIS in the 20 U.S. Attorney's Offices and the Executive Office of U.S. Attorneys. *Id.*; Pet. App. 156a-157a. However, as both lower courts found, the

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[2] As the district court found, "INSLAW performed its contract in a hostile environment that extended from the higher echelons of the Justice Department to the officials who had the day-to-day responsibility for supervising its work." Pet. App. 49a; *see* Pet. App. 180a-186a. The official who principally instigated and fostered this contentious atmosphere was the Department's Project Manager. Pet. App. 23a, 102a-108a, 127a-129a, 137a, 149a-151a. Having been terminated for cause as INSLAW's general counsel several years earlier, the Project Manager made no secret of his animosity toward INSLAW and succeeded in poisoning other senior ranking and subordinate Department officials against INSLAW. *Id.* With the knowledge and approval of his superiors, the Project Manager spearheaded a surreptitious plan to filch Enhanced PROMIS from INSLAW and implement that software in additional United States Attorney's Offices using in-house personnel. Pet. App. 190a-191a.

Department never intended to comply with its obligations to INSLAW, and thus induced INSLAW by "trickery, fraud and deceit" to turn over those copies of Enhanced PROMIS. Pet. App. 7a, 52a-53a, 156a, 228a.

In furtherance of its plan, the Department immediately refused to recognize INSLAW's proprietary rights in Enhanced PROMIS, or even to agree on a standard or protocol by which INSLAW could prove its rights to the Department's satisfaction. Pet. App. 25a, 52a-53a, 157a-162a. The Department also began withholding fees and costs due INSLAW. Pet. App. 29a-30a, 161a-162a.

2. On February 7, 1985, INSLAW filed for protection under Chapter 11 of the Bankruptcy Code.[3] Pet. App. 8a, 26a.

3. In September 1985, INSLAW learned that, following INSLAW's bankruptcy filing, the Department made two unauthorized copies of Enhanced PROMIS and installed them in additional United States Attorney's Offices that were not slated to receive PROMIS under the contract. Pet. App. 26a, 191a-192a. INSLAW promptly put the Department on written notice that these actions violated the rights of the estate, and insisted that the Department either cease its unauthorized use and piracy of Enhanced PROMIS, or legitimize its actions through a license

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[3] The contract between the Department and INSLAW ended in March 1985. Pet. App. 8a. By that time, the Department had withheld from INSLAW approximately $1.6 million in costs and fees. Pet. App. 30a. INSLAW's dispute with the Department over those costs and fees was brought before the Department of Transportation Board of Contract Appeals ("DOTBCA") in four complaints, the earliest of which was filed in late June 1986. *Id.* The Department asserted its claims as a creditor of INSLAW before DOTBCA in counterclaims for nearly $1.5 million. *Id.* Liquidation of INSLAW's and the Department's contract claims was not before the bankruptcy court. The acts giving rise to INSLAW's complaint before the bankruptcy court were not at issue before DOTBCA and, as the Department acknowledged below, DOTBCA could not grant INSLAW the declaratory and injunctive relief sought in its complaint.

agreement. Pet. App. 191a-192a. The Department refused. *Id.* In total, the Department made 25 unauthorized copies of Enhanced PROMIS during the postpetition period and installed them in U.S. Attorney's Offices around the United States and its territories, and brought another 31 Offices "on-line" via telecommunication. Pet. App. 8a, 26a, 192a-193a, 226a. As the Department conceded, it undertook its plan "willingly," "knowingly" and "intentionally," while assuming the risk that its view of INSLAW's proprietary rights in Enhanced PROMIS might be wrong. Pet. App. 192a, 223a.

4. The Department also engaged in other conduct that directly threatened and undermined INSLAW's statutory right to reorganize. The Department publicly slandered INSLAW's title in Enhanced PROMIS at meetings of INSLAW's creditors by claiming that it, not INSLAW, owned sole rights to Enhanced PROMIS.[4] Pet. App. 36a; 76 B.R. at 225-226, 240. The Department further declared that it would give away copies of Enhanced PROMIS under the Freedom of Information Act. Pet. App. 195a-196a, 199a-200a. Acting under the auspices of the bankruptcy court, INSLAW sought to remedy the Department's postpetition conduct through direct negotiations. However, as both the bankruptcy and district courts found, the Department conducted itself in these negotiations in bad faith. Pet. App. 52a-53a, 193a-196a.

5. To remedy the Department's continuous attacks on INSLAW's ownership rights in Enhanced PROMIS, and to prevent further unauthorized copying and dissemination of this central asset of the estate, on June 10, 1986, INSLAW filed a four-count complaint in bankruptcy court seeking:

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[4] Contrary to the court of appeals' view that the Department was "hauled in front of the bankruptcy court simply because INSLAW filed for bankruptcy," Pet. App. 16a, the Department directly and repeatedly injected itself in creditor meetings and in bankruptcy court deliberations of INSLAW's efforts to reorganize. Pet. App. 36a-37a.

—A declaratory judgment pursuant to 11 U.S.C. § 105 that Enhanced PROMIS was the exclusive property of the estate (Count I);

—A declaratory judgment pursuant to 11 U.S.C. §§ 105 and 362(a)(3) that the Department's actions in the postpetition period constituted an "act ... to exercise control over property of the estate" in violation of the automatic stay, particularly by its unauthorized copying of Enhanced PROMIS and its disparagement of INSLAW's rights therein (Count II);

—An injunction pursuant to 11 U.S.C. §§ 105 and 362 to halt further violations of the automatic stay and other actions by the Department that prevented INSLAW's reorganization (Count III); and,

—A prayer for damages under 11 U.S.C. § 362 or, in the alternative, for civil contempt (Count IV).

The bankruptcy court granted the relief sought by INSLAW in an exhaustive and extensively annotated opinion comprising 399 findings of fact and 71 conclusions of law. Pet. App. 59a-236a; *see* Pet. App. 28a-29a. The court granted declaratory and injunctive relief recognizing INSLAW's sole ownership of Enhanced PROMIS as property of the estate. Pet. App. 83a-84a, 220a, 238a; *see* Pet. App. 53a. In granting this relief, the court specifically observed that "certainty over title and control over these trade secret enhancements will significantly assist INSLAW's efforts to emerge successfully from Chapter 11 bankruptcy as a healthy and promising corporate entity." Pet. App. 233a. The court further held that the Department's postpetition copying, installation and continued use of Enhanced PROMIS was an "exercise of control over property of the estate" in violation of the automatic stay. Pet. App. 223a-226a, 238a. The court also found upon clear and convincing evidence that the Department had induced INSLAW by "trickery, fraud and deceit" to relinquish Enhanced PROMIS

based upon promises it never intended to keep. Pet. App. 144a-162a, 192a-193a, 205a, 228a-238a; *see* Pet. App. 67a.

After reviewing the entire record, the district court affirmed the bankruptcy court judgments and findings of fact. The court emphasized that the Department knew that Enhanced PROMIS represented INSLAW's central asset and that ownership of the software was critical to INSLAW's reorganization. Pet. App. 51a-52a. The court held that by unilaterally claiming ownership of Enhanced PROMIS and by using, copying and installing it in offices around the United States, instead of following the orderly procedures established by the Bankruptcy Code for seeking relief from the automatic stay under section 362(d), the Department violated the automatic stay. *Id.* The court also concurred with the bankruptcy court's conclusion that the Department never had any rights whatsoever in Enhanced PROMIS and that "the government acted willfully and fraudulently to obtain property that it was not entitled to under the contract." Pet. App. 52a. The court found "convincing, perhaps compelling support for the findings set forth by the bankruptcy court.... The cold record supports his findings under any standard of review." Pet. App. 50a.[5]

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[5] In a separate proceeding, the bankruptcy court found that the Department attempted "without justification and by improper means" to coerce the United States Trustee to file a motion to convert INSLAW from Chapter 11 reorganization to Chapter 7 liquidation. Pet. App. 189a. The pressures exerted by the Department ultimately compelled the Trustee to seek protection from the bankruptcy court so as to preclude the Department from gaining access to confidential records in the Trustee's file of the INSLAW bankruptcy case. Pet. App. 187a-188a. The bankruptcy court recognized the subversive effect of the Department's actions inasmuch as a motion to convert filed by the impartial Trustee would be given far greater credence than such a motion filed by an adverse unsecured creditor such as the Department. The bankruptcy court held that these acts violated the automatic stay and that they were committed "in bad faith" and "for oppressive reasons"; namely, "to weaken or eliminate INSLAW's ability to press its contract disputes with [the Department]." Pet. App. 186a-189a. The district

The court of appeals readily agreed that these acts, if they occurred, would be inexcusable. Pet. App. 17a. The court concluded, however, that the bankruptcy court lacked jurisdiction to hear INSLAW's complaint as a matter of statutory and constitutional law because none of these acts would violate the automatic stay. Specifically, the court held that the Department could not violate the automatic stay where it obtained and used the property under a claim of right (albeit fraudulent) before the petition was filed, even if that use "may ultimately prove to violate the bankrupt's rights." Pet. App. 5a.[6]

The court of appeals did not base its holding on the language of the automatic stay provision itself. Rather, the court believed that a broad interpretation of the automatic stay would grant the bankruptcy court judicial powers of adjudication reserved under the Constitution to Article III courts. Thus, under the court's view, the automatic stay cannot be applied to disputed property interests because the bankruptcy court lacks jurisdiction to determine the underlying "non-core" issue of whether the disputed property is the exclusive property of the estate.

In addition, the court of appeals failed to address the separate and broader alternative bases of jurisdiction for the bankruptcy court to issue declaratory and injunctive relief or to hear INSLAW's complaint as a non-core matter, irrespective of any determination regarding the automatic stay. Thus, the court

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court affirmed, observing that "the court can think of no greater violation of the automatic stay than to cause the demise of the corporate entity." Pet. App. 53a. The court of appeals reversed on grounds that a motion to convert was itself a lawful act, regardless of the unlawful means and improper motives of the Department. Pet. App. 16a-17a.

[6] The court reversed the lower court judgments on the basis that the Department's motion to dismiss should have been granted. Pet. App. 10a. In fact, however, the grounds upon which the court of appeals reversed were not even raised in the Department's motion to dismiss or in any other pleading before the bankruptcy court.

of appeals opinion calls into question and erodes the authority of a bankruptcy court to protect the estate under these separate statutory provisions.

REASONS FOR GRANTING THE WRIT

The court of appeals here issued two rulings warranting review in this Court. First, it held that the automatic stay created by section 362 has no effect on the conduct of a party who has prior possession of property of the estate, however obtained, and who claims a right to that property, however baseless. Second, it held that, in such a case, the bankruptcy court has no other jurisdictional basis on which to protect the property of the estate or to hear a related property dispute between the debtor and the other party. These rulings undermine, in fundamental ways, essential features of the bankruptcy system and basic powers of the bankruptcy courts. They also directly conflict with decisions rendered by the courts of appeals in other circuits.

I. REVIEW IN THIS COURT IS NEEDED TO ENSURE THE INTEGRITY AND ENFORCEABILITY OF THE AUTOMATIC STAY UNDER THE BANKRUPTCY CODE.

The primary holding of the court of appeals was that respondent did not violate the automatic stay provisions of section 362 when during the postpetition period the respondent (1) continued to utilize software unlawfully obtained from petitioner, (2) copied and extended its use of that software to additional government offices without authorization from the petitioner, and, (3) asserted publicly before petitioner's creditors and potential customers that respondent, not petitioner, was the rightful owner of the software. The court's reasoning focused on two factors: that the Department initially obtained INSLAW's property before INSLAW filed its petition for bankruptcy; and that the Department asserted a claim of right to

the property. While on the surface this holding may appear to be a narrow application of the automatic stay, the court of appeals in fact has created far-reaching exceptions to the automatic stay that should not be permitted to stand.

1. The holding contravenes the plain language of section 362(a)(3) which operates as an automatic stay of "*any act* to obtain possession of property of the estate or of property from the estate *or to exercise control over property of the estate....*" (Emphasis added.)[7] The automatic stay comes into effect immediately upon the filing of a bankruptcy case. *See, e.g., I.C.C. v. Holmes Transportation*, 931 F.2d 984, 987 (1st Cir. 1991). Congress created the automatic stay in 1978 to serve two essential purposes within the bankruptcy system: "First, the automatic stay 'provides the debtor with a breathing spell from his creditors.' In addition, the automatic stay allows the bankruptcy court to centralize all disputes concerning property of the debtor's estate in the bankruptcy court so that reorganization can proceed efficiently, unimpeded by uncoordinated proceedings in other arenas." *In re Ionosphere Clubs*, 922 F.2d 984, 989 (2d Cir. 1990) (citations omitted).[8] The language at issue here, "to

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[7] "Property of the estate" as defined in section 541(a) encompasses "all legal or equitable interests of the debtor in property as of the commencement of the case," including intangible and trade secret property rights. *See Segal v. Rochelle*, 382 U.S. 375, 379 (1966) ("'property' has been construed most generously and an interest is not outside its reach because it is novel...."); 11 U.S.C. § 101(56)(A) ("intellectual property" includes trade secrets). Interference with intangible property rights violates the automatic stay. *In re Prudential Lines*, 928 F.2d 565 (2d Cir. 1991) (parent corporation violated automatic stay by taking subsidiary/debtor's carryforward net operating loss); *In re Sherk*, 918 F.2d 1170 (5th Cir. 1990) (interference with causes of action belonging to the debtor); *In re Crysen/Montenay Energy*, 902 F.2d 1098 (2d Cir. 1990) (same); *In re Golden Plan of California*, 37 B.R. 167 (Bankr. E.D. Cal. 1984) (interference with name of debtor corporation).

[8] The legislative history of section 362 underscores both the intended breadth of the stay and its fundamental role in protecting the rights of debtors.

exercise control over property of the estate," was added in 1984 "to clarify that the automatic stay extends to any exercise of control over property of the estate, an amendment which effectively widened the scope of the stay," *In re Abrams*, 127 B.R. 239, 241 (9th Cir. BAP 1991) (citations omitted), and "to cover a wider array of acts than mere possession," *In re Patterson*, 125 B.R. 40, 44-45 (Bankr. N.D. Ala. 1990). *Accord*, 2 *Collier on Bankruptcy* ¶ 362.04 (15th ed. 1990). This language on its face applies regardless of whether the property is taken from the debtor or whether the debtor is divested of possession of the property.[9]

Contrary to the first factor relied upon by the court of appeals, the automatic stay applies regardless of when respondents obtained possession of the debtor's property. *United States v. Whiting Pools*, 462 U.S. 198 (1983) (automatic stay applied to property seized by IRS prepetition from the debtor in satisfaction of an outstanding tax lien); *see also In re Taslis*, 41 B.R. 47 (Bankr. D. Mass. 1984) (real property lawfully seized prepetition subject to automatic stay). Other courts therefore have recognized that a violation of the automatic stay occurs where a party takes action, or fails to take a required action, with

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> The automatic stay is one of the fundamental debtor protections provided by the bankruptcy laws. It gives the debtor a breathing spell from his creditors. It stops all collection efforts, all harassment, and all foreclosure actions. It permits the debtor to attempt a repayment or reorganization plan, or simply to be relieved of the financial pressures that drove him into bankruptcy.

S. Rep. No. 989, 95th Cong., 2d Sess. 54-55, *reprinted in* 1978 U.S. Code Cong. & Admin. News 5787, 5840-41; H.R. Rep. No. 595, 95th Cong., 2d Sess. 340, *reprinted in* 1978 U.S. Code Cong. & Admin. News 5963, 6296-97.

[9] Given that exceptions to the stay are specified in section 362(b), courts have resisted creating additional exceptions to the automatic stay. *In re Ionosphere Clubs*, 922 F.2d at 991; *In re Stringer*, 847 F.2d 549, 551-52 (9th Cir. 1988).

respect to property of the estate already in the party's possession. *See In re Knaus*, 889 F.2d 773 (8th Cir. 1989) (failure to turn over property of the estate acquired without right in the prepetition period violates the automatic stay); *In re Claussen*, 118 B.R. 1009 (Bankr. D.S.D. 1990) (same).[10] *See also In re Koresko*, 91 B.R. 689 (Bankr. E.D. Pa. 1988) (postpetition sale of a car lawfully repossessed prepetition violates the automatic stay); *In re Willis*, 34 B.R. 451 (Bankr. M.D.N.C. 1983) (same).

2. The second factor relied upon by the court of appeals, the effect of a "claim of right," similarly flouts the principles underlying bankruptcy law and conflicts with the holdings of other courts of appeals. An essential purpose of the 1978 overhaul of the bankruptcy laws was to consolidate in the bankruptcy court all matters affecting the administration of the estate and its property, and thereby promote the effective and consistent resolution of bankruptcy cases.[11] The automatic stay

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[10] This does not, as the court suggests, create a "universal end-run" around the turnover remedy provided under section 542 of the Bankruptcy Code. Pet. App. 15a. Each statute serves different purposes. Section 542 requires the return to the estate of certain enumerated categories of property. Section 542(a) requires turnover of such property as can be used, leased or sold by the estate. Section 542(b), which was the basis for those turnover cases cited by the court of appeals, applies only to money debts that are matured or payable on demand or order. In contrast with these express statutory limitations placed on the types of property subject to turnover, section 362 automatically stays interference with *all* property of the estate.

Moreover, contrary to the views expressed by the court of appeals here, other courts of appeals have affirmed the jurisdiction of bankruptcy courts to resolve disputes over ownership of property of the estate in connection with turnover cases brought under section 542(a). *In re Gallucci*, 931 F.2d 738, 742 (11th Cir. 1991); *Missouri v. United States Bankruptcy Court*, 647 F.2d 768, 774 (8th Cir. 1981), *cert. denied*, 454 U.S. 1162 (1982).

[11] Under the 1898 Bankruptcy Act, bankruptcy courts could exercise "summary jurisdiction" over property in possession of the estate, but could not hear "plenary jurisdiction" cases involving property in the possession of others without consent of the parties. The 1978 Bankruptcy Code intention-

helps to effectuate this purpose by freezing the status quo, and preventing any party from unilaterally altering it, once a bankruptcy case is filed. Thus a party that claims rights adverse to those asserted by a debtor cannot merely act in accordance with its view of a dispute. The party must first move the bankruptcy court for relief from the automatic stay, pursuant to the summary procedures set forth in section 362(d). *Small Business Admin. v. Rinehart*, 887 F.2d 165, 169 (8th Cir. 1989) (violation of automatic stay where government failed to seek relief from the stay before withholding, pursuant to a prepetition setoff claim, farm program payments to a debtor); *In re Computer Communications*, 824 F.2d 725 (9th Cir. 1987) (violation of automatic stay where party unilaterally terminated executory contract without seeking relief from the stay); *cf. First Nat'l Bank of Portsmouth, New Hampshire v. Cope*, 385 F.2d 404 (1st Cir. 1967) (trespass where party repossessed debtor's car without seeking relief from the bankruptcy court under former Bankruptcy Act). Indeed, this is the procedure followed by the United States in *United States v. Whiting Pools*, 462 U.S. 198 (1983).

The bankruptcy and district courts' application of section 362(a)(3) neither requires a party to "capitulate" to a debtor's claims nor leaves a party without recourse to protect its interests, as the court of appeals feared. The party "may simply request relief from the automatic stay." *Small Business Admin. v. Rinehart*, 887 F.2d at 169. *Cf. United States v. Whiting Pools*, 462 U.S. at 212 (IRS required under turnover statute "to seek

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ally eliminated this jurisdictional dichotomy and the resulting delays and expense of litigating in multiple courts, and the wasteful bankruptcy court litigation over whether the bankruptcy court had the requisite summary jurisdiction. S. Rep. No. 989 at 17-18, *reprinted in* 1978 U.S. Code Cong. & Admin. News 5803-04; H.R. Rep. No. 595 at 43-48, *reprinted in* 1978 U.S. Code Cong. & Admin. News at 6004-09. *See also* 130 Cong. Rec. 7492 (1984). *See Northern Pipeline Constr. Co. v. Marathon Pipe Line Co.*, 458 U.S. 50, 53-54 (1982).

protection of its interest according to the congressionally established bankruptcy procedures [section 362(d)], rather than by withholding the seized property from the debtor's efforts to reorganize."). Congress balanced the "initially absolute" breadth of section 362(a) with a right to summary relief from the stay under section 362(d)-(f), and adequate protection under section 361. *In re Computer Communications*, 824 F.2d at 729; *In re First Conn. Small Business Inv. Co.*, 118 B.R. 179, 182 and n.2 (Bankr. D. Conn. 1990).[12] "All parties benefit from the fair and orderly process contemplated by the automatic stay and judicial relief procedure. Judicial toleration of an alternative procedure of self-help and post hoc justification would defeat the purpose of the automatic stay." *In re Computer Communications*, 824 F.2d at 731.

In this case, instead of following the orderly procedures established by the Bankruptcy Code for seeking relief from the automatic stay, the Department pursued a course of self-help. The Department claimed Enhanced PROMIS to be its property, and illegally copied, installed and used it in at least 45 offices throughout the United States. These actions, undertaken unilaterally and without seeking relief from the bankruptcy court, thus violated the automatic stay. Pet. App. 51a-52a, 223a-224a.

3. The court of appeals' view of the effect of a claim of right also cannot be squared with the well-settled law that a claim of right or good faith is irrelevant to whether a violation of the stay was "willful." *See In re Crysen/Montenay Energy*, 902 F.2d at 1105 (intent to perform the act that violates the stay constitutes a "willful" violation under section 362(h)); *In re Atlantic Business & Community Corp.*, 901 F.2d 325, 329 (3d

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[12] Congress placed the initial burden on the party seeking relief so as to avoid dissipating the assets of the debtor, and to promote judicial economy by avoiding emergency hearings on injunctive relief. *In re Wegner Farms*, 49 B.R. 440, 446 (Bankr. N.D. Iowa 1985).

Cir. 1990) (same); *In re Bloom*, 875 F.2d 224, 227 (9th Cir. 1989) (same). *A fortiori*, a claim of right is irrelevant to whether a violation of the stay in fact occurred.[13]

4. In reaching its result, the court of appeals also relied on a specious constitutional analysis that, if followed consistently, would eviscerate key parts of the bankruptcy system. In the court's view, Article III of the Constitution precludes a bankruptcy court from adjudicating any disputed property interests. Under this reasoning, the court of appeals artificially restricted section 362(a)(3) to exclude any acts that involve a property dispute, even where those acts literally are prohibited by the plain statutory language. This holding misapprehends and misapplies the precedent established by this Court.

Congress constitutionally may assign adjudication of federally created rights to particularized tribunals such as bankruptcy courts. What it may not vest in a non-Article III court is the power to adjudicate a traditional state law cause of action either without consent of the litigants or subject only to ordinary appellate review. *Granfinanciera v. Nordberg*, 492 U.S. 33 (1989); *Commodity Futures Trading Comm'n v. Schor*, 478 U.S. 833 (1986); *Thomas v. Union Carbide Agricultural Products Co.*, 473 U.S. 568, 582-84 (1985); *Northern Pipeline Constr. Co. v. Marathon Pipe Line Co.*, 458 U.S. at 71, 77-84. As the Court observed in *Northern Pipeline*, "the restructuring of debtor-creditor relations, which is at the core of the federal bankruptcy power, must be distinguished from the adjudication of state-created private rights, such as the right to recover contract damages...." 458 U.S. at 71. Section 362(a) performs an essential function in the fundamental restructuring of debtor-creditor relations that lies at the core of the bankruptcy power.

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[13] Moreover, the court of appeals' view would turn the inquiry on its head by ignoring the allegation in the complaint and the findings below that the Department obtained the property by fraud and that its "claim of right" was spurious.

See pp. 11-12, *supra*. It thus has been uniformly recognized by the courts of appeals that a proceeding to enforce the automatic stay and to remedy its violation is within the core powers of the bankruptcy court. *Budget Service Co. v. Better Homes of Virginia*, 804 F.2d 289, 292 (4th Cir. 1986). *Accord In re Manville Forest Products*, 896 F.2d 1384 (2d Cir. 1990); *In re Wood*, 825 F.2d 90 (5th Cir. 1987); *In re Arnold Print Works*, 815 F.2d 165 (1st Cir. 1987).[14] It is equally well-established that bankruptcy courts may decide state law claims within core proceedings. 28 U.S.C. § 157(b)(3); *In re Eastport Associates*, 935 F.2d at 1077; *In re Ben Cooper*, 896 F.2d 1394, 1399 (2d Cir. 1990). *See* cases cited at p. 13 n.10, *supra*. Indeed, a determination about what property belongs to the estate is, regardless of the scope of the automatic stay, properly within the core powers of the bankruptcy court. *Infra*, at p. 18.

In sum, where the automatic stay is otherwise applicable, an adjudication of the rights of the creditor and debtor under section 362 by a bankruptcy court is constitutionally justified by the paramount federal bankruptcy law interest in controlling the disposition of the property of the estate. Application of the automatic stay here, according to the plain statutory language, creates no constitutional anomaly, and the Article III concerns expressed by the court of appeals simply do not exist.[15]

5. While this case may appear unusual at first blush, allowing the decision to stand will create enormous problems

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[14] A "core" proceeding under 28 U.S.C. § 157(b) is one "arising under title 11, or arising in a case under title 11...." Automatic stay cases "arise under" title 11, since they "involve a cause of action created or determined by a statutory provision of title 11." *In re Eastport Associates*, 935 F.2d 1071, 1077 (9th Cir. 1991), *quoting In re Wood*, 825 F.2d at 96-97. *See* S. Rep. No. 989 at 154, *reprinted in* 1978 U.S. Code Cong. & Admin. News at 5940.

[15] Moreover, a court may not rewrite or dramatically change the plain meaning and intended scope of a statute, as the court of appeals did here to section 362(a)(3), in an attempt to preserve it against constitutional attack. *See Commodity Futures Trading Comm'n v. Schor*, 478 U.S. at 841.

for the administration of bankruptcy in many different types of cases. The automatic stay, by its very nature, requires automatic compliance by private parties. This decision, however, will begin to unravel the comprehensive bankruptcy reforms enacted by Congress. Parties now can resist compliance with the automatic stay on the theory that (1) they are not covered if they hold property of the debtor and merely allege a baseless claim of right or, (2) the stay cannot be enforced in any case implicating a state-law property dispute. Parties will be free to disregard their obligation to seek relief from the stay from bankruptcy courts under section 362(d), and bankruptcy courts will be unable to effectively protect and control the administration of the estate. The result will be serious interference with the orderly process of debtor reorganization and the bankruptcy courts' ability to deal equitably with all creditors.

II. REVIEW IN THIS COURT IS NEEDED TO CLARIFY AND CONFIRM THE JURISDICTION OF BANKRUPTCY COURTS TO GRANT DECLARATORY AND INJUNCTIVE RELIEF AND TO HEAR RELATED MATTERS.

Leaving aside the automatic stay issue, the court of appeals went on to deny the bankruptcy court *any* other jurisdictional basis to adjudicate the basic property dispute between petitioner and respondent. It suggested that INSLAW should instead have pursued remedies in another forum. In so doing, it called into question two alternative jurisdictional bases that justified the bankruptcy court's grant of declaratory and injunctive relief and its ability to hear an underlying property dispute.

First, a determination about what is "property of the estate" under section 541(a) of the Bankruptcy Code necessarily is within the core jurisdiction of the bankruptcy court. *In re Kincaid*, 917 F.2d 1162, 1165 (9th Cir. 1990); *In re Gardner*,

913 F.2d 1515, 1518 (10th Cir. 1990). Any other rule would make it impossible for the court to accomplish reorganization without a multitude of independent lawsuits. Whatever the scope of the Article III limits on bankruptcy courts, they cannot extend this far.

Second, a bankruptcy court clearly has jurisdiction to issue declaratory and injunctive relief. Section 105(a) of the Bankruptcy Code confers the explicit power to enter "any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title." A request for injunctive relief under section 105(a) is a core proceeding that may be heard and determined by a bankruptcy court. *In re Johns-Manville*, 801 F.2d 60, 63-64 (2d Cir. 1986). It is hornbook law that a bankruptcy court's section 105 powers to issue injunctive relief are broader than those under section 362, and that section 105(a) grants the authority to enjoin actions that harm the estate even if excepted from the automatic stay. *In re Western Real Estate Fund*, 922 F.2d 592 (10th Cir. 1990); *In re Prudential Lines*, 928 F.2d at 574; *In re Baldwin-United Corp. Litigation*, 765 F.2d 343 (2d Cir. 1985); S. Rep. No. 989 at 51, *reprinted in* 1978 U.S. Code Cong. & Admin. News at 5837; H.R. Rep. No. 595 at 12, *reprinted in* 1978 U.S. Code Cong. & Admin. News at 5973. *See United States v. Energy Resources*, 495 U.S. ___, 110 S. Ct. 2139, 2142 (1990).

Given that the bankruptcy court by statute has exclusive jurisdiction of all property of the estate, wherever located, 28 U.S.C. § 1334(d); jurisdiction of all civil proceedings related to the bankruptcy case, 28 U.S.C. § 1334(b); and could "issue any order, process or judgment that is necessary or appropriate," 11 U.S.C. § 105(a), the bankruptcy court had clear authority to issue the declaratory and injunctive relief sought by INSLAW, independent of the automatic stay.

Third, even assuming that the matters adjudicated here were outside the core jurisdiction of the bankruptcy court, the

decision of the court of appeals still cannot stand. Bankruptcy courts have jurisdiction to hear non-core matters as related cases under 28 U.S.C. § 1334(b). In such a case, the bankruptcy court proposes findings of fact and conclusions of law for *de novo* review by a district court under 28 U.S.C. § 157(c).[16] As a practical matter, this *de novo* review occurred here. After a review of all the pleadings, motions, hearing transcripts, trial transcripts and the evidence, the district court explicitly concluded that the findings of the bankruptcy court were supported by the cold record, without regard to the deference due the bankruptcy court's assessments of credibility, "*under any standard of review*." Pet. App. 50a (emphasis added).[17] Yet the court of appeals held that the findings that the district court approved had to be vacated.

Here again, the decision below will create enormous confusion about the scope of bankruptcy jurisdiction and will hamper the efficient administration of bankruptcy law. Prompt resolution of bankruptcy cases will be delayed by the pace of litigation in multiple courts. Trustees may have no choice but to forego enforcing a debtor's property rights rather than dissipate the debtor's assets by filing litigation in multiple forums. Decisions may issue that are inconsistent with those of other courts regarding the property of the estate, or with the general provisions of bankruptcy law. Under the court of appeals decision, a bankruptcy court would be powerless to coordinate or reconcile them.

The decision of the court of appeals, if followed, would resurrect the distinction between summary and plenary jurisdic-

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[16] There is no constitutional impediment to this limited exercise of non-core jurisdiction. *Northern Pipeline Constr. Co. v. Marathon Pipe Line Co.*, 458 U.S. at 84-86.

[17] The Department contended on appeal to the district court that the bankruptcy court's opinions and orders should be treated as factual findings and conclusions of law in a contempt proceeding, subject to *de novo* review.

tion that Congress intentionally abolished in its comprehensive reform of the bankruptcy system in 1978 and 1984. *Supra*, pp. 13-14 n. 11. A primary goal of that reform was to eliminate the very type of jurisdictional battle that INSLAW, after more than five years of litigation, is still fighting.[18] We respectfully submit that the court of appeals decision in this respect is so anomalous that it merits summary reversal.[19]

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[18] The legislative history of the 1978 Code makes clear this congressional imperative:

> The issue of the jurisdiction of the bankruptcy court has been litigated in every volume of the Federal Reporter.... In an area of law in which time is of the essence, the delay attendant upon litigation over jurisdiction is needless and expensive.
>
> * * *
>
> The time for change in this aspect of bankruptcy law has come. It is essential to a healthy bankruptcy system.

H.R. Rep. No. 595 at 43, 48, *reprinted in* 1978 U.S. Code Cong. & Admin. News at 6004, 6009.

[19] While we respectfully submit that the reasons set forth herein merit the grant of the petition for writ of certiorari, one additional factor cannot be ignored. The bankruptcy court concluded, in unusually strong and disturbing terms, that a citizen of the United States had been grievously and intentionally wronged by the United States Department of Justice. The district court independently reviewed the record and found the evidence of government misconduct to be "convincing" and "compelling." Pet. App. 50a. The court of appeals agreed that this conduct, if it occurred, would be inexcusable. Pet. App. 17a. Under these circumstances, petitioner respectfully submits that this petition for writ of certiorari should be given the Court's most serious consideration.

CONCLUSION

The petition for writ of certiorari should be granted.

Respectfully submitted,

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